

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRANDY PATRICE TIMPSON,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	NO.
)	
SENTRY SELECT INSURANCE)	
COMPANY, TIMOTHY B. ESTES)	
d/b/a E & E TRANSPORT,)	
TIMOTHY B. ESTES, individually)	
and as an Agent and Employee of)	
E & E TRANSPORT, and JOHN OR)	
JANE DOE INDIVIDUALS &)	
ENTITIES (1-3).)	
)	
Defendants.)	

PETITION FOR REMOVAL

COME NOW Defendants Sentry Select Insurance Company (“Sentry”); Timothy B. Estes (“Estes”) (collectively “Defendants”), by and through counsel, and pursuant to 28 U.S.C. § 1446 and 28 U.S.C. § 1332, hereby remove the above-styled action from the State Court of Gwinnett County, Georgia based on the following grounds:

1.

On or about February 2, 2023, Plaintiff Brandy Patrice Timpson filed suit against the above-named Defendants in the State Court of Gwinnett County,

Georgia, Civil Action File Number 23-C-00759-S5. A copy of all process, pleadings and orders filed in this action are attached hereto as Exhibit “A.”

2.

On February 3, 2023, Defendants were served with process.¹

3.

The affidavits of service on Estes were not filed until February 16, 2023, therefore, affording Defendants until March 20, 2023 to file this petition for removal. O.C.G.A. § 9-11-4; 28 U.S.C. § 1446.

4.

By information and belief, Plaintiff is a citizen of Georgia. (Compl., ¶ 1).

5.

Defendants Estes is a citizen of Kentucky.²

6.

Defendant Sentry is a citizen of Illinois and Wisconsin as it was incorporated in Illinois and maintains its principal place of business in Wisconsin.

7.

Defendants are aware Plaintiff may intend to add State Farm Mutual Automobile Insurance Company (“State Farm”) as a party to this matter. In

¹ Defendants note State Farm Mutual Automobile Insurance Company was served with process on February 3, 2023, however, is not a named defendant in this matter.

² Defendants note “E & E Transport” is merely a trade name and is not a corporate entity.

arguendo, State Farm is, by information and belief, Plaintiff's uninsured motorist carrier and is therefore a nominal party whose citizenship and consent is not needed for removal. *Tri-Cities Newspapers, Inc. v. Tri-Cities Printing Pressmen & Assistants' Loc. 349, Int'l Printing Pressmen & Assistants' Union of N. Am.*, 427 F.2d 325, 327 (5th Cir. 1970) ("nominal or formal parties, being neither necessary nor indispensable, are not required to join in the petition for removal."); *Broyles v. Bayless*, 878 F.2d 1400 (11th Cir. 1989); *Thermoset Corp. v. Building Materials Corp. of America*, 849 F.3d 1313, 1317 (11th Cir. 2017).

8.

In her complaint, Plaintiff seeks recovery in the amount of \$350,000.00. (Compl., ¶ 20).

9.

Defendants may remove this action to this Court pursuant to 28 U.S.C. § 1332(a)(1) as there is complete diversity between Plaintiff and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10.

Defendants consent to this removal.³

11.

This petition for removal is filed within 30 days of the filing of the affidavit

³ Defendants obtained all non-nominal Defendants' consent.

of service and is timely pursuant to O.C.G.A. § 9-11-4; 28 U.S.C. § 1446.

12.

Pursuant to 28 U.S.C. § 90(a)(2), the United States District Court for the Northern District of Georgia, Atlanta Division, is the district court having jurisdiction over the geographical area where the state court action is pending. Pursuant to 28 U.S.C. § 1446(a), Defendants are entitled to remove this action from the State Court of Gwinnett County to this Court.

13.

Defendants gave written notice of the filing of this Notice to Plaintiff and the Clerk of the State Court of Gwinnett County, a copy of which is attached hereto as Exhibit “B.”

14.

The undersigned have read this Notice of Removal, and to the best of the undersigned’s knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact; is warranted by existing law or an extension or modification of existing law; and is not interposed for any improper purposes, such as to harass or cause unnecessary delay or needless increase in the cost of this litigation.

15.

Based on the foregoing, these Defendants request this Court allow the

requested removal and assert jurisdiction over the state court action.

This 3rd day of March, 2023.

FREEMAN MATHIS & GARY, LLP

/s/ *Marc H. Bardack*

MARC H. BARDACK

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document has been prepared using Times New Roman, 14-point font, and that this document otherwise complies with Local Rule 5.1(C).

This 3rd day of March, 2023.

FREEMAN MATHIS & GARY, LLP

/s/ *Marc H. Bardack*

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically submitted the foregoing PETITION FOR REMOVAL to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and mailed by United States Postal Service, first-class, postage prepaid, a paper copy of the same document to counsel of record who are non-CM/ECF participants. Counsel of record is:

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This 3rd day of March, 2023.

FREEMAN MATHIS & GARY, LLP

/s/ **Marc H. Bardack**
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